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April 19, 2018

Quianna M. Couthen, Complaint Analyst  
**South Carolina Department of Consumer Affairs**  
POB 5757  
Columbia, SC 29250-5757

**RE:** Complaint No. C18-00749  
LaTonya Blunt

Dear Quianna Couthen:

I am in receipt of your letter dated April 2, 2018, postmarked April 5, 2018, and received by my office on Monday, April 9, 2018. (*Enclosed*). I apologize for the tardiness of my original reply as I was out of the office during late March 2018 tending to health matters and out of state in early April due to a two week pre-scheduled family vacation. However, this reply is within fifteen (15) days of receipt of the letter noted above on April 9, 2018, as instructed in the letter.

My understanding is that Ms. Blunt is complaining that Upstate Law Group is allegedly the “middle man” for an illegal “assignment” of her benefits in exchange for a “high interest loan” in which “all of the details are not disclosed in the contract” and that she is a “victim” of this “scam.” She further complains that our firm sued her in South Carolina, though she lives in Georgia, and she further alleges that our client, Life Funding Options, Inc. is a “shell company” for our law firm. She finally complains that Upstate Law Group is allegedly “involved” with several other companies, namely Bradling Financial Group, Veteran’s Benefit Leverage, Performance Arbitrage Company and BAIC.

First, let me provide you some background regarding the transaction Ms. Blunt voluntarily sought out and entered into before refuting each one of Ms. Blunt’s false allegations above.

### **THE TRANSACTION**

In July 2015, Ms. Blunt voluntarily sought out a company named SoBell Corporation (SBC) to assist her in factoring a portion of her monthly VA income stream. In exchange for a commission for their services, SBC marketed Ms. Blunt’s factored income stream. Specifically, in or about August, 2015, SBC negotiated on Ms. Blunt’s behalf for sixty-nine year old John Battaglia to purchase \$473.13 of Ms. Blunt’s \$3,348.64 monthly income stream (i.e. 14.12% of the


total income stream at that time) for 60 months. In exchange, Mr. Battaglia paid a discounted lump sum factor of \$24,566.72 - \$16,035.45 of which was paid directly to Ms. Blunt, to the debts of Ms. Blunt, and to Ms. Blunt's agents/intermediaries in the transaction. Of that \$16,035.45, Ms. Blunt directly received a cash payment of \$7,694.74 and directed that another \$3,159.00 be sent to a debt resolution company to negotiate and resolve her debts (she may have also received a refund from that company once those debts were resolved). **(See attached Authorization to Pay Debts executed by Ms. Blunt)**. On September 23, 2015, Ms. Blunt specifically approved the following breakdown to be paid at closing in exchange for Mr. Battaglia's lump sum payment:

Seller	
<b>Latonya Blunt</b>	<b>SBC3238</b>
	<b>\$473.13</b>
<b>Term: Months</b>	<b>60</b>
<b>Start</b>	<b>10/15/2015</b>
<b>End</b>	<b>9/15/2020</b>
Purchase Price to Seller	\$13,200.00
Cushion Funds	\$473.13
Insurance - Seller's Portion	\$0.00
Insurance Credit to Seller	\$0.00
PAC - Seller Option	\$1,400.00
Catch-up Payments to Buyer	\$473.13
<b>Debtors:</b>	<b>IDS</b>
Capital One	\$591.00
Capital One	\$481.00
Barclays Bank	\$1,528.00
Credit Collect	\$440.00
Global Pymt	\$119.00

Ms. Blunt acknowledged that:

*By signing below, I hereby attest that I have read and fully understand these costs and obligations as disclosed herein. Further, I understand that this disclosure represents the costs and obligations that the Transaction Assistance Team finds relevant at this time and they may change in the future. All decisions you make concerning this sale of your income stream are made with knowledge and understanding of the aforementioned risks and benefits. **You affirm and understand that you may withdraw from this transaction at any time BEFORE closing for any reason, but that once this transaction is completed that if you repudiate or breach this agreement you will subject yourself to civil and/or criminal prosecution.***

Presumably, Ms. Blunt can do simple math and understood that the income stream she sold for the next 60 months equaled \$28,387.80 (60 x \$473.13). She also signed disclosures stating, in part, that:

 The lump sum purchase price you are accepting as indicated on the Sales Assistance Agreement may be significantly less than what you would receive over the length of your defined income stream. Further, as part of this transaction certain commissions and fees are being paid to parties connected with the transaction. You agree for these fees and commissions to be paid as part of this transaction. *(These commissions, fees and costs have already been calculated in the price you were quoted)*



You understand that once you have received your lump sum payment that if you take action to interfere with the Buyer's payments during the period of time covered by their purchase that you will subject yourself to litigation and/or criminal prosecution.



You understand that **this is NOT a loan** and that SoBell Corp. is not a creditor. You understand and agree that this is a private transaction between you and the Buyer and that your obligations are to the Buyer and **NOT** SoBell Corp.



**The Transaction Assistance Team strongly recommends that you seek independent professional advice to determine if this transaction is suitable and/or appropriate for you.**

Despite Ms. Blunt voluntarily seeking out and entering this transaction, she then only made six (6) payments totaling the paltry sum of \$2,838.78. (Recall that she directly received \$7,694.74 and that another \$3,159.00 went to pay HER debts.)

As a result of Ms. Blunt's default, she was sued by Mr. Battaglia's successor-in-interest to the Contract for Sale of Payments – Life Funding Options, Inc. Life Funding Options, Inc. is a debt arbitrage company in Greenville, South Carolina.

### **MS. BLUNT'S ALLEGATIONS**

After Ms. Blunt defaulted, Mr. Battaglia sold his contract to Life Funding Options, Inc. ("LFO"), who is the successor-in-interest to Performance Arbitrage Company, Inc. On February 26, 2018, LFO then brought suit against Ms. Blunt for her breach of contract, conversion, specific performance, constructive trust, and unjust enrichment. (See **Attached Complaint**)

Let me take each of Ms. Blunt's allegations in turn.

#### **A. Upstate Law Group (ULG) is not the "middle man" for an illegal "assignment" of Ms. Blunt's benefits**

First of all, ULG represented its client as the Escrow Agent in this transaction. We do not, nor have we ever, represented Bradling Financial Group, Veterans Benefit Leverage, or BAIC, nor am I aware of what role they had (if any) in this transaction. We also have never represented SoBell Corp (Ms. Blunt's actual agent in this transaction) or Ms. Blunt. Ms. Blunt had an agreement with SoBell Corp (SBC) to market her income stream and she voluntarily entered into that agreement with SBC and agreed to pay them a commission for their services in doing so. (See **attached Purchase Assistance Agreement**)

Second, Ms. Blunt asserts that 38 U.S.C § 5301(a)(1) prohibits transactions of this nature and, therefore, somehow she is a "victim" of this "scam." As an initial matter, we fail to see how Ms. Blunt is the "victim" when she clearly received a significant lump sum payment from Mr. Battaglia (directly receiving a cash payment to her of \$7,694.74 and having another \$3,159.00 sent to resolve HER debts) and then only made only six (6) payments totaling the paltry sum of \$2,838.78. Likewise, Ms. Blunt's bald assertion that the Contract she executed with Mr. Battaglia was an illegal "assignment" is likewise flawed.

VA regulations at 38 CFR 2.6(e)(8) and 14.507 authorize the Department's Office of General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving Veterans' benefits under the laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

In VAOPGCPREC 2-2002 from the Veteran's Administration's General Counsel, the VA clarified their interpretation of 38 U.S.C. § 5301(a), "interpret[ing] this statute as clearly precluding any assignment of VA benefits that would require VA or the Department of the Treasury to make payment *directly to an assignee*." (Emphasis added). In this case, Ms. Blunt was the one who decided how to direct the portion of the payment subject to the Contract, not the VA or Mr. Battaglia. Further, neither Mr. Battaglia nor the Upstate Law Group as Escrow Agent had the right (pursuant to the clear terms of the contract) to approach the VA for direct payment as an "assignee." As such, the lack of the claimed "assignment" is no more evident than in Ms. Blunt's unilateral ability to re-direct the payment to herself and deprive Mr. Battaglia of the benefit of his bargain, which ultimately caused the suit at issue.

As a final note, I would bring to the Department's attention that Upstate Law Group is not a party to these contracts and did not have any involvement in the transactions until after the contracts were fully executed between the parties to them and presented to our law firm by our client for closing of the transaction.

#### **B. Ms. Blunt's contract is not a "high interest loan."**

While Ms. Blunt clearly acknowledged that she knew the transaction she and Mr. Battaglia entered was NOT a loan (**See attached disclosures signed by Ms. Blunt**), apparently after retaining counsel to defend the suit brought by Mr. Battaglia's successor in interest, she and her counsel now wish to recharacterize the transaction. However, the attempt to recharacterize this factored sale into a loan likewise fails similar to Ms. Blunt's attempt to call this an "assignment."

Factoring is a type of financial transaction where a factor *purchases* an accounts receivable in exchange for an immediate payment. This payment provides liquidity to the seller and a potential benefit over the course of the transaction to the factor. Factoring helps sellers that have cash flow problems who cannot qualify for loans or cannot wait the time required for the payment of the account receivable to arrive.

While factored transactions can resemble loans, they are sales and not loans. Further, because factoring is considered a riskier form of financial transaction the cost for factoring is traditionally higher than those of a loan. Factoring percentages are priced by discounting the full value of the expected account receivable. In addition, the agents in a factored transaction charge commissions to locate the proper parties and structures for factored transactions. As such, the ultimate net proceeds from a factored transaction over a period of years may be impacted. This was likewise disclosed to Ms. Blunt and she acknowledged such in her signed disclosures. As such, this was not a "high interest loan" and these facts were clearly disclosed to Ms. Blunt from the start **and she acknowledged the same**.

**C. Ms. Blunt complains of the enforceable South Carolina choice of law and situs of venue in Greenville, South Carolina that she contractually agreed to because she lives in Georgia.**

When parties to a contract confer jurisdiction and venue on a particular court, as a general matter, federal common law directs courts to favor enforcement of the agreement, so long as it is not unreasonable. Giving effect to privately negotiated agreements, in *Bremen*, 407 U.S. at 10, 92 S.Ct. 1907, the Supreme Court held:

“Thus, in the light of present-day commercial realities and expanding international trade we conclude that the forum clause should control absent a strong showing that it should be set aside.... The correct approach would have been to enforce the forum clause specifically unless Zapata could clearly show that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching.”

Albemarle Corp. v. AstraZeneca UK Ltd., 628 F.3d 643, 649–50 (4th Cir. 2010)

Once a contract is fully executed, those terms cannot be changed absent the agreement of all parties. Again, Ms. Blunt voluntarily sought out this transaction. She then signed contracts placing the venue of any claims relating to this agreement to be in the Court of Common Pleas in Greenville County, South Carolina. I would note that our law firm is located in the 13<sup>th</sup> Circuit Court of Common Pleas (the 13<sup>th</sup> Circuit encompasses the Court of Common Pleas in Greenville County, South Carolina) and on our client’s behalf, we sent the funds that Ms. Blunt, her agents, and her creditors ultimately received from our offices. I would further note that Life Funding Options, Inc. has an office in Greenville County, South Carolina.

Finally, Ms. Blunt further clearly falls within South Carolina’s long arm statute to confer personal jurisdiction over her even if she had not contractually agreed to the same. S.C. Code Ann. §36-2-803(1) provides that “[a] court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person’s:

- (a) transacting any business in this State;
- (b) contracting to supply services or things in the State;
- (c) commission of a tortious act in whole or in part in this State; [or]
- (d) causing tortious injury or death in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this State.”

*Id.*

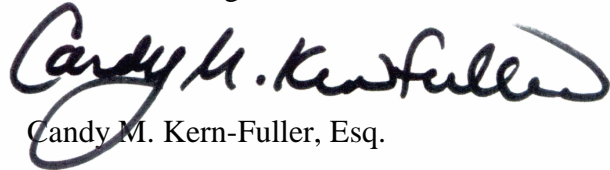
**D. Life Funding Options, Inc. is NOT a “shell company” for our law firm.**

Ms. Blunt’s final complaint appears to be that Life Funding Options, Inc. is a shell company of our law firm. Where Ms. Blunt has gotten this wild accusation is unknown. However, our law firm has two partners – myself and Howard E. Sutter, III. We represent Life Funding Options, Inc. (LFO). None of the partners, attorneys or staff of our firm have any interest in LFO.

In general parlance, A shell company is a company that exists only on paper and has no office and no employees, but may have a bank account or may hold passive investments or be the registered owner of assets, such as intellectual property, or ships. As stated above, LFO has an office located in Greenville County, South Carolina. Further, LFO has employees and its own separate bank accounts that no partner, attorney, staff or employee of Upstate Law Group, LLC control, are authorized signers upon, or have any legal interest in whatsoever.

I believe that this is fully responsive to your request. However, if you have any further questions, please do not hesitate to contact me.

With kindest regards,

A handwritten signature in black ink, reading "Candy M. Kern-Fuller". The signature is fluid and cursive, with a large, sweeping initial "C" and a long, horizontal flourish at the end.

Candy M. Kern-Fuller, Esq.

Enclosures